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## I. INTRODUCTION: LAND, LAW AND GLOBAL VALUE CHAINS

“Good climate and fertile soil are commonly required for the beginning of [a global value] chain.”<sup>1</sup> However, the link between land, legal structures and global production is often overlooked by lawyers and non-lawyers interested in redressing crimes and exploitations that occur throughout the world. This Article aims to take this connection seriously and explore its implications by reflecting on the so called ‘blood sugar’ chain,<sup>2</sup> a transnational combination of actors and institutions which is deeply rooted in land that was forcibly appropriated in the Koh Kong Province of Cambodia and that, after crossing multiple geographical and legal borders, provides sugar and bi-products to businesses and consumers all over the world. The main reason behind this selection — that would otherwise totally subjective and that does not claim any form of universal validity—is represented by the existence of a fervid debate around international law’s capacity to adapt to the evolving nature of transnational production and by the author’s desire to contribute to an emerging conversation around the hegemonic and counter-hegemonic role that legal structures play in defining the form, content, geography and distributive implications of global value chains.<sup>3</sup>

The focus here is on the implications of considering global value chains as non-linear legal constructions that coordinate and keep together the territoriality of the enclosures and the transnationality of production and consumption.<sup>4</sup> When this connection becomes evident, it is possible to move beyond a theoretically fragmented approach to global value chains and realize that these are the dynamic outcome of legal and quasi-legal structures that belong to different geographies and different times. The case of Cambodia was thus selected because it lucidly exposes the links between the localism of violence and the globalism of capital accumulation. As a matter of fact, the ‘blood sugar

<sup>1</sup> Fiona Smith, ‘Natural Resources and global value chains: What role for the WTO?’ (2015) *II International Journal of Law in Context*, 2, 135.

<sup>2</sup> The notion of ‘blood sugar’ was utilized by the representatives of the Cambodia Clean Sugar Campaign when they called for a boycott of the sugar exported to Europe and benefiting from the Everything But Arms trade initiative. According to the campaigners, “increasing production had resulted in human rights abuses” that required to be tackled at the origin, i.e. in the countries that were incentivizing the exploitation and that were benefiting from ongoing land grabbing. The case of EU trade policy and its link with land grabbing in Cambodia is analyzed in below. See Clean Sugar Campaign, website, <http://www.cleansugarcampaign.net/> (visited 11 March 2016).

<sup>3</sup> Although it is my opinion that several of the arguments that will be offered throughout this Article could be applied to different chains and effectively deployed in cases that are less dependent on land exploitation or that do not concern the production of goods, caution and contextualization are extremely important. In particular, it is important to remind that mapping and legal interventions are extremely subjective and political operations and should be recognized as such. Similarly, it should not be overlooked the risk of unexpected spillover effects that legal interventions can generate and the importance to define strategies in the broad context of the whole value chain. For a critical analysis of law in global production and its multiple directions, see Grietje Baars, Dan Danielsen et. al, ‘Law in Global Production: A Manifesto’ (2016) *4 London Review of International Law* 1, 57-79.

<sup>4</sup> The non-linearity of the critical legal chain approach represents an essential innovation compared to the traditional vision of the chain as a set of organized and coordinated moments that operate along a thread. A non-linear understanding of the influence that non-connected hubs and geographies may exercise on each other, along with the fact that the flow of governance, power and authority not necessarily follows the direction of the goods.

chain' is deeply rooted in a specific geography and in a specific soil, but has also geographical and financial structures that are dispersed throughout multiple jurisdictions and solidly linked to the core of contemporary supply chain capitalism. The multiple interventions that have been launched – throughout the world and throughout the years – to obtain justice and restoration for the evictions occurred in the Koh Kong province represent a perfect manifestation of this invisible but crucial connections.<sup>5</sup>

The case presented in this Article suggests to theoretically and critically engage with the shift from the traditional 'parent-subsidiary' model of foreign direct investment (FDI) - a 1+1 structure based on equity and property - to the multi-layered mechanisms of outsourced and delocalized hubs that characterize the contract-based system of production – a dynamic structure that is constantly evolving and legally defined by much more than property and contract. Rather than being perceived as a theoretical and practical threat that requires the introduction of legal order and simplification, the (only) apparently chaotic construction of transnational capitalism becomes an opportunity for multiple and coordinated actions of legal investigation for systemic transformations.<sup>6</sup>

The structure of the Cambodian sugar chain represents another reason behind the choice: when sugar is followed from the land in Koh Kong to the final consumers all over the world, it is possible to identify a relatively low level of vertical integration both at the beginning and at the end of the chain and a reduced number of intermediary tiers. If less complex chains like that of 'blood sugar' already offer the opportunity to reason about multiple spaces of legal intervention, this should be even truer in the case of extremely dense and multilayered chains like that of conflict minerals, where one transnational corporation recently declared more than 40,000 suppliers.<sup>7</sup> In both cases, the *glocal* nature of extraction, circulation and accumulation of value – which are linked to specific places and geographies but at the same time part of a determined and affected by the broader and dispersed legal and economic conditions of the whole value chain - can thus be read and reconstructed through overlapping and sometime challenging legal components. Once these elements are mapped and made visible, a critical assessment of their function, role and impact on power and value can be provided, along with an identification of jurisdictions and quasi-jurisdictional spaces that can be leverage to

<sup>5</sup> For a general account of the underlying situation, see Equitable Cambodia and Inclusive Development International, 'Bittersweet Harvest: A Human Rights Impact Assessment of the European Union's Everything But Arms Initiative in Cambodia' (2013), [http://www.inclusivedevelopment.net/wp-content/uploads/2013/10/Bittersweet\\_Harvest\\_web-version.pdf](http://www.inclusivedevelopment.net/wp-content/uploads/2013/10/Bittersweet_Harvest_web-version.pdf) (visited 15 March 2016); see also Malene Haakansson, 'Stolen land. Stolen future: a report on land grabbing in Cambodia' (December 2011), [http://www.aprodev.eu/files/Trade/landgrab\\_aprodev.pdf](http://www.aprodev.eu/files/Trade/landgrab_aprodev.pdf) (visited 17 March 2016).

<sup>6</sup> For a legal analysis of the implications of the shift from the dualism of Foreign Direct Investments to the multi-territoriality of global value chains, see Kevin B Sobel-Read, "Global Value Chains: A Framework for Analysis," *Transnational Legal Theory* 5, no. 3 (2014): 364–407.

<sup>7</sup> Galit A. Sarfaty, 'Shining Light on Global Supply Chain' (2015) *Harvard International Law Journal* (forthcoming).

change the way in which extraction, production and distribution of value take place.

In conclusion, this article claims that a critical engagement with transnational methods of value accumulation combined with the political nature of mapping represents an innovative perspective of research and investigation that should be experimented by legal scholars interested in pursuing 'global justice' by combining theory and action. In particular, it locates the violations occurred in Cambodia as the point of departure of a transnational network of legal actions that twists the global and diverse nature of the 'blood sugar' value chain in order to multiply the forms of intervention and the their individual relevance. Section II contains a brief reconstruction of the academic debate around law and global Value Chains; Section III introduces the case of Koh Kong plantations in Cambodia to provide the background scenario that is needed to better understand what it means to shift from global value chain as a form of management to global value chain as a form of critical legal investigation and intellectual engagement. Section IV elaborates the notion of critical legal mapping and discusses the importance of 'reading' local violations through the systemic structure of global chains of production. Finally, Section V introduces the notion of 'legal chokepoint' and offers some concluding remarks on the legal and political interactions between the deciphering of the chains' legal complexity and the recognition of new spaces of legal intervention against transnational exploitation. The Annex published online contains a detailed chronology of the main events concerning the 'blood diamond chain' and the legal and quasi-legal actions that were undertaken to defend families and their land.

## II BRIEF GENEALOGY OF THE 'GLOBAL CHAINS' DEBATE

It is no surprise that scholars from different disciplines have engaged with the global expansion of transnational production and offered different definitions of the current legal and economic structure.<sup>8</sup> In particular, the notion of 'commodity chain' made its official appearance in academic literature 1977, where an article by Terrence Hopking and Immanuel Wallerstein set out the need for a new understanding of the past, present and future of the world economy.<sup>9</sup> According to the authors, economic patterns and the historical appearance of different forms of production should not be analyzed as sequential processes whereby national markets evolve in the

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<sup>8</sup> For a detailed account of the genealogy of commodity chains, see Jennifer Bair, 'Global Commodity Chains: Genealogy and Review', in Jennifer Bair (ed) *Frontiers of Commodity Chain Research* (Stanford: Stanford University Press, 2009).

<sup>9</sup> Terrence Hopkins Immanuel Wallerstein, 'Patterns of Development of the Modern World-System,' *1 Review 2* (1977) 111-146.

direction of expanded foreign trade geared to an international market<sup>10</sup> On the contrary, they describe the history of the world economy as systemic and structured on ‘commodity chains’, i.e. transnational networks of labor and production processes that cut across borders, frontiers and territories and that cannot be reduced within the scope of one State.<sup>11</sup>

Today, almost forty years after World System theory coined the idea of ‘commodity chain’ as a disruptive paradigm to better understand the unequal distribution of resources throughout the world and the continuous exploitation of peripheral areas by core actors,<sup>12</sup> almost everyone in the world cares about Global Supply Chains.<sup>13</sup> A quick search reveals that chains of production are central to researches conducted by the World Bank,<sup>14</sup> the United Nations Conference on Trade and Development (UNCTAD),<sup>15</sup> the Food and Agriculture Organization,<sup>16</sup> transnational corporations like Coca Cola,<sup>17</sup> workers unions,<sup>18</sup> business schools and

<sup>10</sup> Jennifer Bair, ‘Global Capitalism and Commodity Chains: Looking Back, Going Forward, 9 *Competition & Change* 2 (2005) 153-180, . 155.

<sup>11</sup> Wallerstein and Hopkins offer this condensed definition of ‘commodity chain’ in another article that appeared on *Review* in 19865. In particular, they provide two emblematic examples to demonstrate that the economy before 1800 was characterized by the transnational nature of production and the global distribution of labor: ships production and the chain of what flour. Terence Hopkins and Immanuel Wallerstein, ‘Commodity chains in the world economy prior to 1800’, 10 *Review* 1 (1986) 157-170.

<sup>12</sup> Giovanni Arrighi and Jessica Drangel utilized the world system paradigm to introduce the core-periphery distinction and to discuss the unequal distribution of value that it determined. Giovanni Arrighi and Jessica Drangel, ‘The stratification of the world-economy’, 10 *Review* 1 (1986) 9-74.

<sup>13</sup> Gary Gereffi and Joonsuk Lee, *supra* n 3.

<sup>14</sup> In 2007 the World Bank issued a “Logistics Performance Index” (LPI) titled “Connecting to Compete: Trade Logistics in the Global Economy.” Although the focus is on logistics, the idea behind the index is to rate States’ access to global market by means of their participating to transnational supply chains, logistics networks and systems aimed to rapidly transport goods throughout the planet. According to the 2014 version of the document: “Supply chains are the backbone of international trade and commerce. Their logistics encompasses freight transportation, warehousing, border clearance, payment systems, and increasingly many other functions outsourced by producers and merchants to dedicated service providers. The importance of good logistics performance for economic growth, diversification, and poverty reduction is now firmly established.” See Jean-Francois Arvis, Monica Alina Mustra, John Panzer, Lauri Ojala and Tapio Naula, *Connecting to Compete: Trade Logistics in the Global Economy; The Logistics Performance Index and Its Indicators* (Washington: World Bank, 2007); Jean-Francois Arvis, Monica Alina Mustra, John Panzer, Lauri Ojala and Tapio Naula, *Connecting to Compete 2014 Trade Logistics in the Global Economy The Logistics Performance Index and Its Indicators* (Washington: World Bank, 2014), iii.

<sup>15</sup> See, e.g., Alessandro Nicita, Victor Ognitsev and Miho Shirotori, Global Supply Chains: Trade and Economic Policies’, 55 *Policy Issues in International Trade and Commodities*, United Nations Conference on Trade and Development (2013)

<sup>16</sup> See e.g., Louis Bockel and Fabien Tallec, *Commodity Chain Analysis: Constructing the Commodity Chain Functional Analysis and Flow Charts* (Rome: FAO, 2005).

<sup>17</sup> See Jay Moye, ‘Coca-Cola’s Agricultural Supply Chain Journey’, The Coca Cola Company, April 15, 2015, available from <http://www.coca-colacompany.com/stories/coca-colas-agricultural-supply-chain-journey> [last visited May 4, 2015].

<sup>18</sup> For a detailed account of the role of workers and workers unions in studying and challenging the global supply chain, see Deborah Cowen, *The Deadly Life of Logistics* (Minneapolis/London: University of Minnesota Press, 2014). See also the interesting website of the American Shipper for an indication of the multiple actions undertaken in different ports throughout the United States. Available from (<http://www.americanshipper.com/Main/News.aspx?taxonomy=Labor>) [last accessed May 4, 2015].

schools of management,<sup>19</sup> sociology departments,<sup>20</sup> law schools,<sup>21</sup> and First Nations associations.<sup>22</sup> The diversity of speakers is accompanied by a variety of approaches and objectives. The multiplicity of interpreters and standpoints also reveals the political nature of an undefined concept that is often proposed as neutral, technical and procedural.<sup>23</sup>

One of the reasons why Global Chains became so popular can be found in the diffusion and consolidation of the governance-oriented framework formulated by Gary Gereffi at the beginning of the 1990s.<sup>24</sup> Differently from World System theorists, Gereffi and the school of Global Commodity Chain do not look at the global system of production and at the distribution of labor and capital as the representation of an economic over-structure aimed to the reproduction of inequality and injustice by the appropriation and polarized allocation of value. On the contrary, Global Commodity Chain scholars tend to dismiss the social and distributional implication of production (as demonstrated by the use of 'commodity' instead of 'value') and perceive the chain as a closed system of intra-firms interactions that connects economic operators disseminated throughout the world. Global Commodity Chains are not seen as the representation of an exploitative economic system but as a neutral process that requires organization, governance, control, efficiency, etc. and from which everyone can profit: the important thing for national economies is to being able to join an existing chain or 'upgrading' from one lower node to an upper one.<sup>25</sup>

<sup>19</sup> Here a list of the 'best supply chain and logistics management programs' in the United States: <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-business-schools/logistics-rankings> [last accessed May 4, 2015].

<sup>20</sup> Sociological research on economic networks and global chains of production is among the most advanced and is briefly discussed below.

<sup>21</sup> The next sub-sections offers a more detailed analysis of ongoing researches on law and global production chains.

<sup>22</sup> See, e.g., Idle No More, <http://www.idlenomore.ca/>; Shiri Pasternak, The Economics of Insurgency, The Media Co-op, January 14, 2013, available from <http://www.mediacoop.ca/story/economics-insurgency/15610> [last accessed May 4, 2016];

<sup>23</sup> See Marion Werner, Jennifer Bair and Victor Ramiro Fernández, 'Linking Up to Development? Global Value Chains and the Making of a Post-Washington Consensus', 45 *Development and Change* 6 (2014) 1219-1247.

<sup>24</sup> The different mechanism of governance depending on where power is concentrated throughout the chain are represents the organizational criteria behind Gereffi's famous five models of GVC: market governance; modular governance; relational governance; captive governance; hierarchical. See e.g. Gary Gereffi and Miguel Korzeniewicz (Eds), *Commodity Chains and Global Capitalism*, (Westport: Greenwood Press: 1994); Jennifer Bair (Ed.), *Frontiers of Commodity Chain Research*, (Stanford: Stanford University Press, 2009); Joonkoo Lee, 'Global Commodity Chains and Global Value Chains', in Robert A. Denemark (Ed.), *The International Studies Encyclopedia*, (Oxford: Wiley-Blackwell, 2010), 2987-3006.

<sup>25</sup> According to Gereffi "in order for countries to succeed in today's international economy, they need to position themselves strategically within ... global networks and develop strategies for gaining access to the lead firms in order to improve their position" (Gary Gereffi, 'Beyond the producer-driven/buyer-driven dichotomy: the evolution of global value chains in the internet era', IDS Bulletin, 32(3), pp.30-40, 32). According to this idea of competing for



### A. The managerial View: Law as a Connector within the Global Chain of Production

When it comes to the analysis of law in global production, it is possible to identify a similar variety of perspectives. For example, some legal scholars operate within Gereffi's scheme of chains as mechanisms of governance and tend to utilize a positivist and procedural notion of law as a connector between the different actors and phases of production. In particular, these authors identify legal structures as relevant because they are instruments of governance and the source of authority that allocates rights and obligations within nodes and throughout nodes. In this framework, law represents the link between workers and employers that takes place within a specific node, but also the connection between retailers and suppliers or farmers and the shipping company in charge of moving goods throughout the planet. A change in the legal arrangements would thus change the relationship between the affected parties and the way in which the chain is managed.

Similarly, even scholars who have been engaging with the new challenges that global chains analysis poses and about the opportunities that it offer tend to produce adopt an introspective approach to legal institutions and global chains. In their accounts, property and contract are the 'legal connectors' between the:

“full range of actors and activities that are required to bring a product or service from conception, through the intermediary phase of production (involving a combination of physical transformation and the input of various producer services), delivery to final consumers, and final dispose after use.”<sup>26</sup>

In both accounts, value chains are minutely broken down into their individual components and property and contracts are analyzed in order to understand how value is added, who does it and what benefit each firm derives from its efforts.<sup>27</sup> Moreover, law is not the product of struggles that are determined by underlying power

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development, governments that introduced incentives for manufacturing and extraction of natural resources should then modify the legal and fiscal scenario in a way that facilitates the flow of higher-level investments, such as transformation or research and development. For a critique of the narrow economic view adopted by most of the available studies on commodity chains and upgrading, see K.T. Rammohan and R. Sundaresan, 'Socially Embedding the Commodity Chain: An Exercise in Relation to Coir Yarn Spinning in Southern Asia', 31 *World Development* 5 (2003), 903-923 (the author criticizes the simplistic approach of GCC scholars and underline that upgrading does not imply, per se, the improvement of social conditions for the most disadvantaged members of the society. Furthermore, labors' competition, capital supremacy, and other circumstances are such that economic growth tends not to be properly redistributed).

<sup>26</sup> Raphael Kaplinsky, *Spreading the Gains from Globalization: What Can Be Learned from Value-Chain Analysis?*, 47 *Probs of Econ. Transition* 74 (2004), 80.

<sup>27</sup> Kevin B. Sobel-Read, 'Global Value Chains: A Framework of Analysis', 5 *Transnational Legal Theory* 3 (2014), 364-

dynamics as much as it does not generate value: contracts and mechanisms of vertical integration are only instrumental to the distribution of value that has already been generated. Therefore, the specificity of the legal contexts where transactions take place are taken into consideration so that legal analysts can determine the impact that *ad hoc* allocations of rights and obligations have on the parties' bargaining power and on the final distributive framework.<sup>28</sup>

As a consequence, there is the risk of an excessive focus on local structures and specific bargaining moments, a situation that would deprive the observer of the possibility to recognize the global relevance of each piece of the value chains and push her into the traps of economic nationalism and political territorialism. Moreover, if the chain is fragmented into its individual pieces, the production of inequality loses its transnational character and law is assumed as a tool that can intervene punctually, whether to improve labor conditions, reduce the exploitation of the environment or to reallocate positive and negative externalities.

### B. Critical Engagement with Law *as* Global Chains

According to a group of scholars gathered around the Institute for Global Law and Policy who have been looking at Law in Global Production and adopted a plurality of disciplines, legal structures are not only instruments of governance that determine the allocation of value at different levels of the chain. For these authors, with whom I have the privilege to cooperate, law is a central element in the construction, reproduction and existence of each node of the chain, but also crucial in the allocation of bargaining power among the different actors (state, capital, labor), and in the production of non-internalized externalities.<sup>29</sup> More interestingly, law is not a neutral instrument that can be deployed in order to shape and redefine the chain, but is the outcome of social struggles and the instrument to exercise force and domination.

More specifically, the Law in Global Production research group operates in a theoretical framework that

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<sup>28</sup> For an attempt to “fully integrate into legal scholarship the fundamental insights of the robust, multidisciplinary body of academic literature on global value chains” see Sobel-Read, *id.*

<sup>29</sup> Clelland offers an iceberg-shaped reconstruction of global supply chain as divided between “visible monetarized flows of bright value and hidden un(der)costed flows that carry dark value (the unrecorded value of cheap labor, labor reproduction and ecological externalities)” that are extracted below the visible surface. This dissertation tries to take into account both as expression of an economic system that is structured around accumulation, dispossession and polarization. See Donald A. Clelland, ‘The Core of the Apple: Dark Value and Degrees of Monopoly in Global Commodity Chains’, 20 *Journal of World-Systems Research* 1 (2014), 82-111.



is defined by the seminal work of Robert Hale and other legal realist institutional economists<sup>30</sup> and that is deeply informed by the contributions that critical legal scholars have offered to the consolidation of the idea “that rules of property, contract, and tort law (along with the criminal law rules that reinforce them in some cases) are ‘rules of the game of economic struggle.’”<sup>31</sup>

According to the Research Group's manifesto, legal structures are crucial in the distribution of bargaining power among stakeholders at the micro-level and determine the way in which value is generated and allocated at the macro-level. There is nothing natural and predetermined, for example, in the hyper-mobility of capital, the indeterminacy of the territorial framework occupied by states' jurisdictions, the diffusion of private system of governance as mechanisms of discipline, and the hierarchical relationships between different layers of law.

Similarly, these scholars affirm that looking at law in global chains does not mean to focus on which legal institutions intervene in the “tangible and intangible links that structure the transformation of raw materials into final products.”<sup>32</sup> Instead, an engagement with law and chains of production is useful because it offers the opportunity to think about injustice and inequality as linked to spaces and legal frameworks that go beyond national legal orders and cut across jurisdictions as much as legal spaces. Dispossession, evictions, violence, exploitation and other forms of subordination are not only the product of the legal order in which they are immediately embedded, i.e. of the local context and of its historical construction by means of social struggle; they are the outcome of multiple levels of legal coercion that operate throughout the space of the chain and determine the final allocation of value and power. Certainly complex and intellectually demanding, a global

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<sup>30</sup> The notion of law as coercion is central to a critical approach to law and has been widely discussed by critical legal scholars interested in exposing the systemic injustice of the current legal and social system. For those interested in knowing more, I recommend, e.g., Robert Hale, ‘Coercion and Distribution in a Supposedly Non-Coercive State’, *Political Science Quarterly* 38 (1923); Robert Hale, *Freedom through Law: Public Control of Private Governing Power* (New York, 1952); Robert Hale, ‘Force and the State: A Comparison of “Political” and “Economic” Compulsion’, *Columbia Law Review* 35 (1935). See also, e.g., John R. Commons, *Legal Foundations of Capitalism* (New York: the Macmillan Company, 1924); Richard T. Ely, *Contract and Property in Their Relations to the Distribution of Wealth* (New York: Mcmillan, 1914). The first attempts by critical legal scholars to engage with Hale’s legacy are: Duncan Kennedy and Frank Michelman, ‘Are Property and Contract Efficient?’, 8 *Hofstra Law Review* 3-10 (1980); Duncan Kennedy, ‘Distributive and Paternalistic Motives in Contract and Tort Law, with Special Reference to Compulsory Terms and Unequal Bargaining Power’, 41 *Maryland Law Review* 563 (1982); and Duncan Kennedy, ‘The Role of Law in Economic Thought: Essays on the Fetishism of Commodities’, 34 *Am. U. L. Rev.* 939 (1985).

<sup>31</sup> Duncan Kennedy, ‘The Stakes of Law, or Hale and Foucault!’ in D. Kennedy, *Sexy Dressing Etc.: Essays on the Power and Politics of Cultural Identity* (Cambridge: Harvard University Press, 1993), 83-126.

<sup>32</sup> See Radu Mares, *supra* n 2.

chain approach to law and inequality has several advantages and stimulating implications.

For example, among the most interesting ideas proposed by critical value chain analysis, there is the fact that this new wave of scholarship is problematizing the indistinct use of 'legality', which is not accepted as a neutral datum but questioned in its essence. Moreover, these critical reconstructions tend to blur the distinction between private and public and to focus on law, coercion and the impacts on global distribution. Furthermore, they recognize the power of mapping and the importance of defining chains according to objectives of equality and justice, along with the fact that obtaining justice at one point of the chain can generate inequality at another level of the chain. At the same time, these scholars are aware of the indeterminacy of law, of the structural bias of the capitalist society and of the power of interpretation. Also, they use and challenge economic notions such as systemic risk and unexpected consequences, stressing the importance of taking into consideration the inevitable spillover effects of any legal intervention. Finally, they invite to reconsider the geography of law and jurisdiction as dynamics field characterized by overlapping, tensions, appropriations, and whose crystallization in the framework of the Westphalian State (like in the *Kiobel II* case discussed in Chapter II) is deeply inadequate.

In conclusion, the application of a global chain method to law and justice recognizes that legal structures are central to the generation, extraction, allocation and appropriation of value that happens at the level of any single node of the chain. However, it also links the local dispossession with the broader system of global production and with the wider allocation of resources that takes place throughout the chain and that involves states, firms, financial capital, labor, and the rest of the collectivity (that benefits, from example, by the reduction of greenhouse gases emission). Finally, it recognizes the historical dependency and the social construction of legal structures, together with their intrinsic relationship with power and 'legal' dispossession. If global capital accumulation is the product of multiple local acts of alienation and appropriation, a local-global approach to law and justice can be utilized for the short-term objective of understanding and redefining the positions of power within each node but also to design and implement systemic reforms and alternatives to the current world-economy.<sup>33</sup>

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<sup>33</sup> The use of the global value chain as a methodology would provide the opportunity to focus both on the role of law in the definition of the internal forms of domination (capital-labor) and on the external implications of global production and

### III. BEYOND TERRITORIAL ENTRAPMENT: MAPPING THE GLOBAL LEGAL CONSTRUCTION OF CAMBODIAN ‘BLOOD SUGAR’

On March 20, 2006 the Cambodian Council of Ministers agreed in principle to issue two Economic Land Concessions in favor of Koh Kong Sugar Industries Co Ltd (KSI) and Koh Kong Plantation Co Ltd (KPT), both of which were owned by a Taiwanese company.<sup>34</sup> According to the agreement, the two concessioners would have engaged in sugar cane plantation and refinery operations in Botum Sakor and Sre Ambel Districts, in Koh Kong Province, Cambodia (see Figure 1 below). On May 19, agents and armed military police cleared the Land of three villages (Chikhor, Chhouk and Trapaing) without prior warning, allegedly for the purpose of complying with the ELCs.<sup>35</sup>

[SPACE FOR FIGURE 1]

The immediate consequence of the government’s intervention was the eviction of thousands of people without notice and compensation. Homes and land had to be abandoned to ‘clear’ the land from any encumber and make space for sugar production. On August 2006 the Ministry of Agriculture, Forests and Fisheries of Cambodia eventually awarded the two Economic Land Concessions (ELCs) to KKP and KSI.<sup>36</sup> The two areas, each one slightly smaller than the legal limit of 10,000 hectares,<sup>37</sup> overlapped with the area that had been violently enclosed in May.

From a legal perspective, the two ELCs identified the land on which sugar cane was going to be

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trade on the distribution of resources and reproduction of inequality. Although extremely ambitious, the long-term objective would be bridge the gap between World System Theory and those theorists who criticize it for losing sight with the ‘internal’ social relations of production and class struggle. See Hae-Yung Song, ‘Reorienting the Critique of the Capitalist World System beyond the Dichotomy between Trade vs. Production Relations’, *Journal of World-Systems, Review Symposium on Andre Gunder Frank’s Reorienting the 19<sup>th</sup> Century*, (2014).

<sup>34</sup> According to Tate & Lyle, the owner of the refinery company in the UK, the concessions were granted to two Cambodian companies, Koh Kong International and Duty Free Shop. See United Nations Special Representative of the Secretary General for human rights in Cambodia (“SRSG”), *Economic land concessions in Cambodia: A human rights perspective*, (09 June 2007) [http://cambodia.ohchr.org/WebDOCs/DocReports/2-Thematic-Reports/Thematic\\_CMB12062007E.pdf](http://cambodia.ohchr.org/WebDOCs/DocReports/2-Thematic-Reports/Thematic_CMB12062007E.pdf) (visited 17 March 2016).

<sup>35</sup> Source: *Song Mao & Others, and, Tate and Lyle Industry Limited and T&L Sugars Limited* – before the English High Court of Justice, Queen’s Bench Division, Commercial Court, Defence and Counterclaim of the First and Second Defendants, 2 May 2013, para 8. The Defendants in the UK case do not admit that the Government “cleared” the land. If (which the Defendants do not admit) the land was cleared, they “deny that any of those involved in “clearing the Land was acting on behalf of KSI and/or KPT”. The argument utilized by the Defendants is that the two companies were incorporated only after the May events and that they did not receive the concessions until 2 August 2006.

<sup>36</sup> Agreement for Plantation of Sugar Cane, and Processing Factory of Sugar Cane Between the Ministry of Agriculture, Forestry and Fisheries and Koh Kong Sugar Industry Company Ltd (KKSI ELC Agreement), 02 August 2006; Agreement for Plantation of Sugar Cane, and Processing Factory of Sugar Cane Between the Ministry of Agriculture, Forestry and Fisheries and Koh Kong Plantation Company Ltd (KKPC ELC Agreement), 02 August 2006.

<sup>37</sup> Article 59, 2001 Cambodian Land Law.

produced, and thus legitimized the evictions, the appropriation of water for industrial production, and – more generally the transformation of small scale farming into large-scale plantations agriculture. As in many similar cases of States acting as broker of public land, these two concessions can be considered as the spatial and chronological origin of what was later called the ‘blood sugar’ chain. As such, they were immediately targeted with a civil and a criminal action before the Koh Kong Province Court that asked the Court to modify (and then cancel) the concession and identify criminal responsibilities in the process. However, no satisfaction was obtained despite the evidence that violations of domestic and international procedures took place. On the contrary, the transnational production chain was set up and Cambodian land integrated in the global market: sugar cane was produced on the enclosed land, transformed in a mill that occupies communities’ land, loaded on cargos that cross the Gulf of Aden and delivered to its final destination in the United Kingdom.

Despite the failure in preventing the evictions and the establishment of the chain, the Koh Kong case was represented by a unique attempt by local communities and activists to strategically embed the local evictions into the broader frame of a global sugar chain. Instead of limiting their scope of action to the traditional framework of State-investor-communities, they understood that the integration into a chain of production meant that existence of legal, economic and social connections with other points of the chain located throughout the world. More precisely, victims and stakeholders followed sugar and capital outside the spatial framework of the Cambodian rural areas and were capable of redefining the value chain in terms of multiple legal and economic connections that are not otherwise visible if we consider production chains as mere sets of exchanges and economic operators disposed along a line that links the raw material to the moment of final consumption.

The communities and their supporters traced what I call a ‘critical legal map’ of transnational sugar production and gave visibility to political and legal responsibilities that would have otherwise remained obscure. In this way, they enriched the territorial and local character of enclosure and forced evictions, combined them with the global nature of production and discovered opportunities for transnational network of action and intervention. Before presenting the critical legal chain of ‘blood sugar’ and the way in which it exploits capital’s ramifications and fragilities, the next section briefly identifies the main steps of the chain as would normally be described from a managerial perspective. This should make it easier to realize the importance and innovative nature of multiterritorial legal mapping and the construction of a transnational structure of legal intervention that challenges injustices addressing their systemic character.

### **A. Limits of a Managerial Account of Value Chains**

[SPACE FOR FIGURE 2]

Figure 1 above geographically locates the districts of Botum Sakor and Sre Ambel, in the Koh Kong province, South-West Cambodia. It is there where sugar cane is grown and picked (generally by hand and in limited cases by the use of machine) within the two Economic Land Concessions issued by the Cambodian Government in 2006. Once the canes are harvested they are transformed into raw sugar by a mill located in the same area which is owned and operated by KSI, one of the two recipients of the concessions. After that, raw sugar is shipped to the United Kingdom, where it is refined in the Thames Refinery (London, UK), the largest cane sugar brand in the United Kingdom and has been owned and operated by Tate & Lyle Sugars Limited (TLS) since 1878. Once Cambodian raw sugar is refined, it is combined with sugar sourced in several other parts of the world and transformed into hundreds of ingredients which go into thousands of different products “which are enjoyed by millions of consumers around the world.”<sup>38</sup>

If we were to adopt the approach to global value chains that characterize scholars and practitioners interested in management and governance, these different passages can be represented by the simplified chain presented by Figure 2: this is a schematic reconstruction of a sugar chain that helps portray the different tiers of the chain and allows the opportunity to identify those logistics and governance-related hubs that are generally considered relevant. On the basis of this representation, it would be possible to identify the leading firm, investigate the distribution of power and think of the way in which property and contract intervene at different levels of the chain in order to keep its structure together. On this latter point, we may focus on the property rules that govern the access and use of land in Cambodia, the temporary contracts concluded with the farmworkers, the contract of purchase of sugar concluded between T&L and KSI, or the equity relationships that characterize the link between parent companies and subsidiaries. Similarly, if we were interested in the link between international trade and the dispersed nature of global production, we would be looking at the rules of international economic law that define, enhance and limit the way in which goods and services can move from one point on the map to another one, especially if they are located in different countries.<sup>39</sup>

<sup>38</sup> Tate & Lyle, Tate & Lyle in our daily lives, <http://www.tateandlyle.com/ingredientsandservices/pages/tateandlyleinourdailylives.aspx> (visited 16 March 2016).

<sup>39</sup> Fiona Smith (note 1) offers a clear reconstruction of the main aspects of international trade law that intervene in the extraction and multi-territorial circulation of natural resources. More recently, Olivier De Schutter has produced a thoughtful and elaborated compilation of the five main legal tools that belong to the World Trade Organization's

In that case, a state-to-state perspective would be adopted and the way in which private and public actors contributed in transforming Cambodian land into a factor of global production may be moved to the background.

Although these two approaches to global production networks are useful and essential to the understanding of the way in which law reacts to global value chains, they appear limited in their consideration of the role that legal structures that do not belong to the realm of property, contract and trade play in defining the space, trajectories, content and redistributive implications of global production. They may be useful as potential tools to challenge and redress the injustices produced the grabbing of land and the eviction of thousands of people, but would fall short in the understanding of the role of law in contributing to these events. Therefore, a more complex analysis and engagement with the legal complexity of global production appears to be needed: one that not only identifies law as an intra-chain managerial tool, a controller of products circulation or a provider of solutions against exploitation. On the contrary, it is important to develop an analytical tool that recognizes that legal structures are central in the establishment of complex and transnational forms of production and the allocation of power and resources, so that legal elements become visible and can be twisted against themselves.

### **B. From Global Value Chains to Critical Legal Chains**

Using the case of 'blood sugar' as a methodological laboratory, there are several entry points that can be adopted in order to critically engaging with law in production chains. Similarly, there are multiple legal areas that appear relevant to the definition of the geography of production and the distribution of value throughout its hubs. For example, we could look at the content and enforcement of labor regulation in each phase and see whether or how global production is squeezing the part of value that remains with workers. This would require to focus on the positive datum of the legal framework, but also on the content of individual contracts, the enforcement by courts, and the internal system of corporate social responsibility (if existent). Moreover, the working conditions could be confronted with the system of international human rights law and considered on the basis of compliance and responsibilities of employers and state actors.

Similarly, the inquiry could concern the property regime that applies at all levels and determine how the use value of the land is distributed between capital, local communities and the public administration, possibly with the intention of convincing the latter of the need to exercise more

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framework and that may be used to utilize trade law to the service of sustainable development. See Olivier De Schutter, *Trade in the Service of Sustainable Development* (Oxford and Portland: Bloomsbury, 2015).



coercive authority over the capital returns.<sup>40</sup> In addition, the attention could go to the legal relationships between all the actors involved in the chain and in particular to the way in which contract and property allocate resources (for example between the Tate & Lyle refinery and a global retailer or a factory that utilizes sugar ingredients for its products) with the objective of redefining their content. The decision to intervene in one area rather than another would depend on strategic, legal and political considerations, and will certainly have a redistributive outcome.

Potentially, the legal rewriting of the value chain could be endless: each element could be unpacked in multiple legal dynamics and dissected into the underlying power dynamics that shape it and that it tends to crystallize. For this reason, it is not worth trying to offer a descriptive analysis of all the possible legal variables that emerge when looking at the global chain of Cambodian sugar produced in the Cambodian districts of Botum Sakor and Sre Ambel. On the contrary, each critical legal map will be drafted depending on the objective that the cartographers are pursuing, the time and resources at their disposal, and the possibility of fruitfully leveraging specific elements rather than other. Similarly, cartographers will have to keep in mind that their maps should be constantly amended and redefined, so to be constantly representative of power dynamics and of the existing opportunities.

The case of 'blood sugar' offers an example of this mapping process: a critical legal engagement with transnational sugar production and consumption as a matter of global legal advocacy. Starting from 2006, in fact, communities, activists, lawyers, courts and U.N. bodies have been drafting an alternative map of Cambodian 'blood sugar' by means of activism, politics, legal praxis and ongoing actions undertaken at different levels of the chain. The map still originates in the districts of Botum Sakor and Ambel but its ramifications go far beyond the three phases of extraction, refining, distribution that is generally presented by global value chains' analysts. This multiterritorial map of spaces of interventions brings to light unexpected connections between productive and financial capital, domestic law and international human rights treaties, regional courts and the international criminal court, and private regulation and trade regime. Moreover, it traces multiple threads between exploitation and its final beneficiaries, i.e. goes to the roots of human rights violations and reveals the hidden connections as much as the possible venues where they can be challenged. Finally, it is constantly developing and mutating: as such, it demonstrates that it does not exist an optimal or unique way of mapping but that maps, politics and socio-economic conditions are closely interrelated.

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<sup>40</sup> For example, we could ask whether or not Tate & Lyle's refinery pays any land-related taxes to the city of London or to the United Kingdom. We could also extend the analysis from the right to exploit the plantations in Cambodia to the right of constructing a mill and operating it.

[ SPACE FOR FIGURE 3 ]

Figure 3 above is an attempt of visually represent the different points of contact that have been identified and that have become part of the alternative ‘blood sugar’ chain. Although static, the map is a useful contribution because it provides a systemic representation of all the major interventions that have been activated in relation to the ongoing dispute for land in the districts of Botum Sakor and Sre Ambel.<sup>41</sup> In particular, each flag represents an action - legal or ‘quasi-legal’<sup>42</sup> - that was launched immediately after the two ELCs were issued and that have been exploring different spaces and times for redressing the violations occurred at a specific time and in a specific moment.<sup>43</sup> The interventions are dispersed throughout the world, brought by different actors (although mainly by CLEC with the support of different partners), and rely on the substantive and procedural diversity of the multiple legal structures that intervene in the definition of the ‘blood sugar’ chain. However, they have a central element in common that keeps them all together: they are all united by the intention to utilize the transnational nature of production to address and challenge the injustice and sufferance experienced by the inhabitants of these villages at the moment of the enclosure of their land and of their forced eviction. Instead of adopting a unique approach (like that of human rights)<sup>44</sup> or leveraging one sole space of intervention (like the Alien Tort Statute and the US federal court), justice for the communities in Koh Kong was pursued (and is still pursued) by strategically constructing different legal and political arguments, connecting different spaces of debate and legal engagement, addressing different actors and trying to utilize the space of the global value chain as the space where accountability can be sought and remedies found.<sup>45</sup>

The Annex attached to this work lists all the different moments of the anti-land grabbing strategy that was launched at the beginning in 2006 so to provide the reader with a useful tool to better understand the time and geography of the main interventions, the main actors who were involved and

<sup>41</sup> The map has been realized by the author and is available here: <https://www.zeemaps.com/map?group=1349254>

<sup>42</sup> I define as ‘quasi-legal’ those intervention that operate at the level of corporate social responsibility rather within national, regional or international law spaces.

<sup>43</sup> Baxi claims that “Focusing only upon the “time and circumstance” of litigation enables forgetfulness of the time and space of the patterns of global capital and technology movements across frontiers.” The idea of a multiterritorial and multi-chronological legal structure tries to find a solution to this problem and to tackle the structural inequality of global capitalist and not only its contingent representations. See Upendra Baxi, *Mass Torts, Multinational Enterprise Liability and Private International Law* (The Hague, Boston/London: Martinus Nijhoff Publishers, 2000), 325.

<sup>44</sup> A traditional human rights approach to land grabbing has two main and interconnected limitations: by exclusively focusing on the triangular relation between state, investors and communities, it would be territorially limited to Cambodia, without properly assess the structural causes of evictions and the responsibilities that lie elsewhere in the value chain.

<sup>45</sup> See Baxi, note 18, 419 (“Because on principle it remains open to say that the place of harm is constituted by the very space of corporate conduct”).

the different arguments that were adopted in each circumstance. When the series of events is combined with a multiterritorial understanding of local forms of exploitation, some geographical and legal implications emerge and give a sense of what it means to try to twist the global system of production against itself. In terms of geographical and jurisdictional spaces, the enclosure of land at the beginning of the sugar chain has been challenged before judicial and non-judicial entities located in Cambodia (where a civil and a criminal case have been filed with the Koh Kong Provincial Court),<sup>46</sup> United Kingdom (where the raw sugar is received and refined),<sup>47</sup> Thailand and Indonesia (due to the nationality of the companies producing sugar),<sup>48</sup> the United States (due to the nationality of the recent purchaser of T&L sugar),<sup>49</sup> The Netherlands (where the Office of the Public Prosecutor of the International Criminal Court is located), Bruxelles (where the European Commission is based),<sup>50</sup> Norway<sup>51</sup> and also Germany.<sup>52</sup>

<sup>46</sup> Citing point 3 of Regulation No. 01 of May 7, 2012 by the Royal Government of Cambodia, villagers asked for the cancellation of the ELCs because of the violation of the due legal processes and of the agreement, and because of the infringement of the residents' or communities' land.

<sup>47</sup> See *Song Mao & Others, and, Tate and Lyle Industry Limited and T&L Sugars Limited* – before the English High Court of Justice, Queen's Bench Division, Commercial Court, Particulars of Claim, 28 March 2013 (*Song Mao PoC*). See also *Song Mao & Others, and, Tate and Lyle Industry Limited and T&L Sugars Limited* – before the English High Court of Justice, Queen's Bench Division, Commercial Court, Defence and Counterclaim of the First and Second Defendants, 2 May 2013.

<sup>48</sup> On January 6, 2010, the Community Legal Education Center (CLEC) filed a complaint with the National Human Rights Commission of Thailand (NHRC) for human rights violations committed by the Thai mother-company Khon Kaen Sugar Industry Public Limited (KSL) through its Cambodian subsidiaries KPT and KSI. Findings of the Subcommittee on Civil and Political Rights of the National Human Rights Commission of Thailand in the Koh Kong Sugar Cane Plantation case in Cambodia (July 25, 2012), <http://www.boycottbloodsugar.net/wp-content/uploads/2012/07/NHRC-Findings-on-Koh-Kong-25-July.pdf> (visited 17 March 2016).

<sup>49</sup> See CLEC and EarthRights International, Complaint Under the OECD Guidelines for Multinational Enterprises, October 2012, document with the author. See also Community Legal Education Center of Cambodia (CLEC)/Earth Rights International (ERI) and American Sugar Refining Inc. (ASR), Final Statement for U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises, June 20, 2013.

<sup>50</sup> The European Commission has been targeted by a multiannual campaign to review its Everything But Arm Initiative. See Peter Zsombor, 'EU Hires Experts to Help Gov't Compensate Evictees', *The Cambodia Daily*, January 23, 2015, <https://www.cambodiadaily.com/news/eu-hires-experts-to-help-govt-compensate-evictees-76567/> (visited 18 March 2016); see also European Parliament, Resolution of 26 October 2012 on the situation in Cambodia, (2012/2844(RSP)), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0402+0+DOC+XML+V0//EN> (visited 17 March 2016); European Parliament resolution of 16 January 2014 on the situation of rights defenders and opposition activists in Cambodia and Laos (2014/2515(RSP)), <http://www.europarl.europa.eu/document/activities/cont/201401/20140122ATT78068/20140122ATT78068EN.pdf> (visited 18 March 2016).

<sup>51</sup> Norway's Government Pension Fund was set up in 1990 as a fiscal policy tool to support the long-term management of Norway's petroleum revenue. The fund is managed by Norges Bank Investment Management (NBIM) on behalf of the Ministry of Finance, which owns the fund on behalf of the Norwegian people. The fund's investment strategy is determined by the Ministry in consultation with NBIM management and discussions in parliament. Petroleum revenues are regularly transferred into the fund, and is primarily invested abroad to avoid over-heating the Norwegian economy. Source: Tufts University, 'The Sovereign Wealth Funds Initiative, Profile: Government Pension Fund Global (Norway)', <http://fletcher.tufts.edu/~media/Fletcher/Microsites/swfi/pdfs/2012/profiles/Norway%20Fund%20Profile.pdf> (visited 2 April 2016).

<sup>52</sup> Starting from 2009, the private fund DWS was targeted for several months by a series of protests and campaigns, both in Germany and at the international level. In the aftermath of the food peak, FIAN and other local organizations utilized the powerful vocabulary of land grabbing, forced eviction and speculation on food to underline the role of German financial

From a legal perspective, the actions that have been launched reveal the irrelevance of a distinction between private and public law and of the multiple legal orders whose coerciveness is crucial to the continuous process of dispossession, accumulation and allocation of power among communities, companies, governments, financiers, donors, etc.<sup>53</sup> In order to give an idea of the polyhedral legal nature of the chain, it is enough to think that the forced eviction from the villages of Sre Ambel and Botum Sakor and their implications for the local communities have been accused of being in violation of civil law provisions, criminal law, European trade law, regional human rights conventions, international human rights conventions, UK domestic tort law,<sup>54</sup> complaint resolution processes created within the framework of a private certification schemes (Bonsucro),<sup>55</sup> quasi-private system of transnational corporate social responsibility (the OECD guidelines multinational enterprises),<sup>56</sup> international criminal law,<sup>57</sup> and also of the Code of Ethics of the Norwegian Sovereign Fund.<sup>58</sup>

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institutions, and of DWS in particular. See Roman Herre, German Investment Funds involved in Land Grabbing, FIAN Germany, 2010, [http://www.fian.de/fileadmin/user\\_upload/dokumente/shop/Land\\_Grabbing/2010\\_study\\_german\\_investment\\_funds\\_ww\\_w.pdf](http://www.fian.de/fileadmin/user_upload/dokumente/shop/Land_Grabbing/2010_study_german_investment_funds_ww_w.pdf) (visited 15 March 2016).

<sup>53</sup> The notion of law as coercion is central to a critical approach to law and has been widely discussed by scholars interested in exposing the systemic injustice of the current legal and social system. See e.g., Robert Hale, 'Coercion and Distribution in a Supposedly Non-Coercive State' (1923) *Political Science Quarterly* 38; Robert Hale, *Freedom Through Law: Public Control of Private Governing Power* (New York, 1952); Robert Hale, 'Force and the State: A Comparison of "Political" and "Economic" Compulsion' (1935) *Columbia Law Review* 35. See also, e.g., John R. Commons, *Legal Foundations of Capitalism* (New York: the Macmillan Company, 1924); Richard T. Ely, *Contract and Property in Their Relations to the Distribution of Wealth* (New York: Mcmillan, 1914). The first attempts by critical legal scholars to engage with Hale's legacy are: Duncan Kennedy and Frank Michelman, 'Are Property and Contract Efficient?' (1980) 8 *Hofstra Law Review*, 3-10; Duncan Kennedy, 'Distributive and Paternalistic Motives in Contract and Tort Law, with Special Reference to Compulsory Terms and Unequal Bargaining Power' (1982) 41 *Maryland Law Review* 563; and Duncan Kennedy, 'The Role of Law in Economic Thought: Essays on the Fetishism of Commodities' (1985) 34 *American University Law Review*, 939.

<sup>54</sup> See *Song Mao & Others*, note 22.

<sup>55</sup> The Better Sugar Initiative (Bonsucro) is a global multi-stakeholder initiative for sustainable sugar cane production that introduces a specific set of standards, a mechanism of control and utilizes third party auditors. See Tim Bartley, 'Certification as a mode of social regulation', in David Levi-Faur (ed) *Handbook on the Politics of Regulation* (Cheltenham: Edward Elgar, 2012), 441-452; Virginia Haufler, 'New forms of governance: Certification regimes as social regulations of the global market', in Errol Meidinger, Chris Elliott and Gerhard Oesten (eds), *Social and Political Dimensions of Forest Certification* (Remagen-Oberwinter: Forstbuch, 2003), 237-247.

<sup>56</sup> Community Legal Education Center of Cambodia (CLEC)/Earth Rights International (ERI) and American Sugar Refining Inc. (ASR), Final Statement for U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises, June 20, 2013. "The OECD Guidelines for Multinational Enterprises are recommendations addressed by governments to multinational enterprises operating *in and from* adhering countries (italics added)." OECD Guidelines, Foreword, <http://www.oecd.org/corporate/mne/>

<sup>57</sup> See Communication Under Article 15 of the Rome Statute of the International Criminal Court: The Commission of Crimes Against Humanity in Cambodia July 2002 to Present, Executive Summary, [https://www.fidh.org/IMG/pdf/executive\\_summary.pdf](https://www.fidh.org/IMG/pdf/executive_summary.pdf) (visited 18 March 2016) (herein "Communication").

<sup>58</sup> On November 16, 2011 CLEC and EarthRights International submitted a memorandum to the Norwegian Council on Ethics to bring to its attention the activities of KSL, in which the Norwegian Global Pension Fund is an investor. According to the complaint, whose content has been kept confidential, the financial stake in KSL would have violated the Norwegian Global Pension Fund's Ethical Guidelines. Source CLEC and EarthRights Business and Human Rights in ASEAN: The Implications of the Koh Kong Sugar Plantation and Factory Case in Cambodia for Due Diligence and

The combination of the geography of intervention and the variety of actions that have been proposed (and that do not represent a final list) reveals the existence of an extremely dense and complex legal structure lying underneath the managerial map of supply chain capitalism and the reconstruction of law in global production as a governance mechanism that links value adding operations. Therefore, the hidden legal and financial scaffolding needs to be brought to light and activate. This is especially the case, I claim, for the links between financial capital and productive capital, i.e. of the interaction between private financiers and companies that operate on the ground. In conclusion, a critical mapping of the multiple legal structures that lie underneath the global blood sugar chain appears useful to expose the local and global dynamics of contemporary capitalism and identify points of tension and possible trajectories of legal intervention.

By connecting local dispossessions with the broader framework of accumulation, a non-linear approach to production networks is developed that better represent the complexity of transnationalism without losing sight with the specificity of local actions and dynamics. At the same time, such approach can overcome the limits of fragmented legal structures that reproduce dichotomies between private and public, human rights law and trade law, politics and economics, etc. Finally, the construction of a multiterritorial strategy of social justice that follows the value chain wherever it operates (and even where it sources financial capital) can reduce the ability of transnational corporations to utilize territories and frontiers to hide from accountability and operate under impunity.<sup>59</sup> In light of the aforementioned, the next Section looks at theories and reflections that lie outside of the traditional boundaries of law and offers an opportunity to encounter with ideas and perspective that can strengthen the need for a shift from global value chains to critical legal chains analysis.

#### IV. CRITICAL LEGAL MAPPING: VISIBILITY, HETEROGENEITY AND VULNERABILITY OF SUPPLY CHAIN CAPITALISM

When Anna Tsing discusses the importance of global value chains as a method of analysis of

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Remedies,

[http://www.clec.org.kh/web/images/Resources/Res\\_Koh%20Kong%20ASEAN%20Case%20Study%202013%20-%20ENG1374035991.pdf](http://www.clec.org.kh/web/images/Resources/Res_Koh%20Kong%20ASEAN%20Case%20Study%202013%20-%20ENG1374035991.pdf) (visited 20 April 2016).

<sup>59</sup> It is broadly accepted that the transnational capital system is characterized by the multiplication of spaces where it operates in order to reduce costs, extract cheap resources and dump negative externalities beyond the legal frontier of the nation state; as Thomas Princen states, “*distancing, shadowing and obscuring*.” Thomas Princen, ‘The shading and distancing of commerce: When internalization is not enough’ (1997), 20 *Ecological Economics*, 235–253. In a similar way, Upendra Baxi affirms that “Enterprise, contrary to the etymological sense of risk-taking, nowadays consists in managing risk-impunity ; the almost footloose and fancy-free exercise of managerial technoscientific power has now become the power to create ever-growing human communities of misfortune.” See Upendra Baxi, note 17, 317.



contemporary capitalism, she recognizes that:

“[t]hinking through supply chain capitalism [...] is particularly useful in addressing two important sets of questions. First, how can we imagine the ‘bigness’ of global capitalism (that is, both its generality and its scale) without abandoning attention to its heterogeneity? Supply chains offer a model for thinking simultaneously about global integration, on the one hand, and the formation of diverse niches, on the other. Supply chains stimulate both global standardization and growing gaps between rich and poor, across lines of color and culture, and between North and South. Supply chains refocus critical analysis of diversity in relation to local and global capitalist development.”<sup>60</sup>

According to Tsing, the combination between the global and the local is useful because it enriches the Universalist (and masculine) vision of capital accumulation as homogeneous with the diversity and complexity that is proper of feminist studies. Looking at the world through this combination will “help us imagine forms of globally interconnected diversity: a capitalism that is big yet unpredictably heterogeneous.”<sup>61</sup> Tsing is not alone in underlining the *glocal* nature of global value chains and the implications that it has in terms of struggles for value redistribution. For example, Cowen, Chua and Barnes have been looking at the expansion of global logistics and the capacity of disruptive techniques that take place outside the workplace—like blockades of ports and occupations of highways—to subvert the existing balance of power and temporarily suspend private accumulation.<sup>62</sup> In their opinion, the speed and geography of global logistics are such that tactical local interventions are possible and their effect may be compounded. The occupation of ports in Oakland Hong Kong, Chile, Marseille, Durban, and Karachi,<sup>63</sup> for example, can destabilize the entire chain and create spillover effects throughout the whole productive system. Tsing defines these possibilities as ‘openings’ that radical critics and activists have to use, whereas Chua calls them ‘logistics chokepoints’.<sup>64</sup>

<sup>60</sup> Anna Tsing, ‘Supply Chains and the Human Condition’ (2009) *Rethinking Marxism* 21, 2, 150.

<sup>61</sup> *Ibid*, 54.

<sup>62</sup> See, e.g. Deborah Cowen, ‘A Geography of Logistics: Market Authority and the Security of Supply Chains’, (2010) *The Annals for the Association of American Geographers* 3, 1-21; Deborah Cowen, ‘Containing Insecurity: US Port Cities and the ‘War on Terror,’ in Steve Graham (ed.) *Disrupted Cities: When Infrastructure Fails* (New York and London: Routledge. 2009), 69-84; Charmaine Chua, ‘Logistics, Capitalist Circulation, Chokepoints’, *The Disorder of Things* (09 September 2014) <http://thedisorderofthings.com/2014/09/09/logistics-capitalist-circulation-chokepoints/> (visited 5 March 2016); Jasper Barnes, ‘Logistic, Counterlogistics and the Communist Prospect’, *Endnotes*, <http://endnotes.org.uk/en/jasper-bernes-logistics-counterlogistics-and-the-communist-prospect> (visited 5 March 2016).

<sup>63</sup> Chua, *Ibid* (visited 5 March 2016). See also, Associated Press, ‘Occupy protesters disrupt ports across US west coast’, <http://www.theguardian.com/world/2011/dec/13/occupy-protesters-shutdown-west-coast-ports> (visited 8 March 2016).

<sup>64</sup> Chua defines chokepoints as the consequence of “the concentration of the circulation of commodities at certain key sites



In way similar to occupations and local acts of civil disobedience, it is my opinion that legal structures can be utilized in a strategic way that has similarities with these disruptive techniques and that can create ‘redistributive openings’ besides redressing violations that have already happened. As the case of Koh Kong reveals, ‘legal elements’ define local practices of production, distribution, transformation, consumption, etc but also the overarching flow of capital, circulation of goods, provision of services and the overall structure of the chain. This geographical and legal ‘dispersion’ may be due to patterns of extraction or logistics (the places where raw material is extracted, transformed, shipped, sold, recycled, etc. may be different and chosen for multiple reasons), but also to non-strictly productive decisions (i.e. if the place of incorporation is not the place where the productive activity is exercised, if the value chain is financed by financial actors whose geography is not closely linked to that of production, or if specific jurisdictions are utilized for fiscal reasons). From a critical legal perspective, the multiplication of spaces of production that characterizes today’s capitalism means the multiplication of sites of possible interventions and resistance: I call them ‘*legal chokepoints*’. Similarly to the logistic chokepoints discussed by Cowen and others, legal chokepoints offer the possibility to victims, activists and lawyers to address local and specific injustices while at the same recognizing the transnational nature of production and the need to organize legal resistance beyond the specific geography where extraction, production and distribution materially take place.

Crucial to this new approach is the identification of these chokepoints and of ways in which the legal links between global capitalism and the localism of the territory can be strategically harnessed. In this way, the ‘hidden’ legal structures underneath the global value chain are made visible and are transformed into present or possible leverage points where legal pressure can be exercised.<sup>65</sup> As the ‘blood sugar’ critical map reveals, the joint effort of communities, lawyers, activists, international organizations and other interested parties can lead to the production of alternative maps that expose the points of ambiguity and indeterminacy of the value chain so that they can be combined, pressured and partially balance the spatial and territorial advantage of transnational capital.<sup>66</sup> Maps are political

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along the supply chain.” They “might thus present the possibility for strikes and protests to articulate resistance not only symbolically but also materially, by literally grounding capitalist circulation to a halt.” Charmaine Chua, *ibid*.

<sup>65</sup> As stressed by Deborah Cowen “[m]apping the ‘total picture’ is crucial in measuring supply chain performance; visual representation is a means toward control, achieved by ‘transferring the complex reality of performance into a sequence of limited symbols’. In other words, process mapping aims to make the system visible so its component parts can be measured and managed (internal references omitted). See Deborah Cowen, note 18, 109-110.

<sup>66</sup> According to Kitchin and Dodge, the problem with alternative mapping is that it does not “challenge the ontological status of the map; rather it simply reveals the politics of mapping.” Mapping is, thus, processual and not static, a continuous pursuit of representational solutions to solve relational, spatial problems. In this light, an alternative way to global value chain mapping would not only require to offer new maps but also to understand why and how maps originate, their theoretical background and their political implications. See Rob Kitchin and Martin Dodge, ‘Rethinking maps’ (2007) 31 *Progress in Human Geography* 3, 331-334; see also Denis Wood, *The Power of Maps* (New York:

instruments and as such can be used to challenge current patterns of enclosure and exploitation.<sup>67</sup>

More generally, critical mapping should bring to light all the legal orders and actors that are directly or indirectly intersected by the system of production. Without a critical mapping and a systematic approach to production, the farmers evicted in Cambodia are confined within their territorial framework: they would be farmers evicted for an economic concession and not farmers evicted to supply sugar to the worldwide market. Similarly, tea picker who works on the Knuckles Mountain in Sri Lanka would only be employees and co-workers, incapable of being perceived as the starting point of a long chain that links their operation with the afternoon ritual of millions of people around the world. It is only through this mapping that evictions and work become legible and understood as the product of a series of non-linear legal and political interventions that may be geographically removed from each other. Evictions and picking tealeaves are no more confined processes that only concern employers and employees, host States and corporations, but part of a much broader network that involves multiple workers, places, capitals and geographies. In this way, the extraction and allocation of labor and capital is locally defined and globally relevant: the outcome of legal structures and bargaining asymmetries that are historically shaped and that progressively distance work from its owner and value from its geographical origin.<sup>68</sup> Visibility, locality and heterogeneity can thus lead to trans-chain solidarity (legal and non-legal) and unexpected opportunities to destabilize the current system of production: multi-territorial actions can be structured to leverage the domestic legal roots of supply chain capitalism.

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Guilford, 1992).

<sup>67</sup> Mapping, as widely discussed by critical scholars like Henri Lefebvre and James Scott, has political and normative implications that should be understood and critically utilized. Mapping does not mean describing an objective world and “it is not the territory.” See James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*, New edition (Yale University Press, 1999); Henri Lefebvre, *State, Space, World: Selected Essays* (University of Minnesota Press, 2009). According to Korzybsky, “Maps and mapping precede the territory ‘they represent’”. See Alfred Korzybsky, *Science and Sanity: An Introduction to Non-Aristotelian Systems and an Introduction to Non-Aristotelian Systems and General Semantics* (Forest Hill, NY: Institute of General Semantics, 1973). For Pickles, they respond to something concrete in our lived experience and channel it in a particular way. They shape society, attribute power, disempower, create narratives and new spaces: in brief, there are “the products of power and they produce power.” Pickles 2004, quoted in Rob Kitchen and Martin Dodge, *ibid*, 4.

<sup>68</sup> As Immanuel Wallerstein and global system theories have amply proved, current patterns of production and trade are deeply embedded in the colonial past. Thus, an interesting map that could be drawn is that the ‘colonial map of global value chain’, i.e. a reconstruction of the legal structures that constructed colonial value chains and their relationship with the current geography of production. In the case of sugar – the commodity utilized as case study in the first part of this chapter – this research has been conducted by Ahluwalia et al., and more recently by Michael Fakhri. See Pal Ahluwalia, Roger Knight, and Bill Ashcroft, eds., *White and Deadly: Sugar and Colonialism* (Commack, N.Y.: Nova Science Publishers, 1999); Michael Fakhri, *Sugar and the Making of International Trade Law* (Cambridge UK ; New York: Cambridge University Press, 2014). For an overview of global system theory and the relationship between capitalism and global value chains, see Terence K. Hopkins and Immanuel Wallerstein, ‘Commodity Chains in the World-Economy Prior to 1800’, *Review (Fernand Braudel Center)* 10, no. 1 (July 1, 1986), 157–70; Immanuel Wallerstein, *The Modern World-System: Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century*. (New York, NY, Academic Press, 1974); Immanuel Wallerstein, ‘Globalization or the Age of Transition?’ (2000) *International Sociology* 15, no. 2 (2000), 249–65.

Once the chosen links and their interactions are made visible, they are conceived in the mechanism of power and value allocation. Then, a chain-wide structural intervention can be elaborated by leveraging actors and institutions that are operating at different local levels together with actors and institutions that are operating throughout the chain: these would not be exclusively based on litigation but should certainly imply the drafting of new regulation, the proposal of concrete policy interventions, the redaction of reports and the provision of legal arguments to support political campaigns throughout the chain. In general, once maps are drafted of the legal chokeholds identified, they can be used to highlight those legal structures that – alone or in combination with others - have the potential to reallocate bargaining power among the parties, internalize negative externalities, and more generally redefine the way in which value is generated and produced throughout the chain.

Needless to say, the fact that legal interventions can exercise pressure on the spaces of capital accumulation does not imply that these kinds of actions have to be considered sufficient or that they should take place outside of an appropriate social and political environment. Moreover, it is not my intention to suggest that legal liberalism can provide the solution to structural problems of exploitation and marginalization.<sup>69</sup> On the contrary, a focus on law as a possible instrument of social change does not discount the fact that law is coercive, indeterminate, and structurally biased in favor of power. In addition, critical lawyers should not overlook the systemic implications of legal interventions and the unexpected consequences—both in terms of generation of positive spillovers and negative externalities—that a localized change in the legal structure can produce.

To conclude, the example of Cambodia that is presented in this chapter should be read and understood with a series of caveats. Each situation is linked to specific socio-political circumstance and open to indeterminate outcomes. The complexity and interconnection of the chain require lawyers to deal with multiple distributive futures and try to anticipate them. In particular, modifications of bargaining power at a certain point of the chain may lead to a squeeze in value distribution elsewhere—like in the case of increased food standards and the higher cost for small-scale producers.<sup>70</sup> Regional interventions may be more effective because they reduce the risk of regulatory competition. Unilateral legal destabilizations occurring in core countries may be extremely powerful but also critical in their quasi-imperial implications. Critical lawyers should map and utilize legal chokepoints to create

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<sup>69</sup> A strong critique of the role of law as a possible source of emancipation from capitalism is provided by Grietje Baars in her recent article on corporate accountability. See Grietje Baars, “‘It’s not me it’s the corporation’: the value of corporate accountability in the global political economy (2016) 4 *London Review of International Law* 1, 127-163.

<sup>70</sup> For further information on food standards and value chains, see Bill Vorley and Tom Fox, ‘Global Food Chains, Constraints and Opportunities for Smallholders’, (IIED); Joonkoo Lee, Gary Gereffi and Janet Beauvais, ‘Global value chains and agrifood standards: Challenges and possibilities for smallholders in developing countries’ (2010) 109 *Proceeding of the National Academy of Science USA*. 31, 12326–12331.

political spaces that local movements, affected communities, workers, etc. can occupy to pursue their own struggles and that should not be seen as an end in themselves.

## V. A CRITICAL LEGAL CHAIN ENGAGEMENT WITH SUPPLY CHAINS: WHAT DOES IT MEAN FOR BUSINESS AND HUMAN RIGHTS?

This Article has discussed the case of two sugar cane plantations currently operating in Koh Kong, Cambodia, to reflect on the possibilities of legal analysis and intervention that originate from the interaction between the global nature of supply chain capitalism and its multiple territorial components. With a combination between legal institutionalism, critical geography and value chains analysis, the different sections have dismissed the idea that value chains are an objective and stable representation of the current system of production that only requires better governance or a redefinition of the rules concerning the movement of goods and services. On the contrary, individual elements, their concatenation and the distribution of value across them is constantly redefined by the non-linear interaction of legal and non-legal structures that may operate at a distance, often unaware of each other.

Differently from the traditional approach adopted by legal scholars who critically engage with global value chains, this Article has not focused on the way in which property and contract are utilized to structure production, manage the different pieces of the system, and allocate bargaining power. On the contrary, it has looked at the possibilities that delocalization, outsourcing and the construction of multinational forms of production offer to identify new spaces to analyze, decipher, contest and redefine the construction of transnational production, the distribution of value and the generation of socio-economic inequalities. Throughout the Article, the geographical, economic and legal complexity of contemporary capitalism (that operates in multiple places at the same time, mixes productive capital with non-productive financial resources and is constantly interacting with multiple legal framework) has been simplified with the use of the 'blood sugar' chain and the critical legal map that has been produced by local communities acting against evictions and appropriations.

In the last part of the Article, the notion of 'legal chokeholds' has been introduced as the mobile and unsettled points of contact between the 'global' nature of the chain and the 'territoriality' of specific legal (or quasi-legal) structures. It is there, I claim, that legal and political interventions can be realized in order to open possibilities to reallocate value, power and resources at different levels of the system of production. Often this can be realized without the need to rely on the extraterritorial application of law but by simply 'intercepting' the chain wherever it 'touches ground'.<sup>71</sup> What is new compared to the

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<sup>71</sup>Robert Wai, 'Transnational Liftoff and Juridical Touchdown: The Regulatory Function of Private International Law in an

previous approaches to law in global production is the invitation to create alternative maps of value chains that go beyond the stream of logistics and the materiality of commodities' circulation: some of the legal, financial, social and political structures may not be immediately evident when scholars simply focus on the production and mobility of goods and services, but they are central in the construction of supply chain capitalism and in the identification of spaces of intervention.

However, multiterritorial legal approaches to global value chains should not be structured with the idea that intervening on laws and legal structures offers a possibility to redefine the structural economic and social inequalities that characterizes our society. On the contrary, multiterritoriality must be characterized by the recognition that production is an increasingly intricate architecture that requires a systemic and holistic approach, an intellectual and pragmatic engagement capable of giving visibility (i.e. making legible) to the various opportunities that derive from the transnational nature of contemporary capitalism and by the increase in the number of actors involved, but not limited to its legal confines.

As the case of the Koh Kong plantations reveals, an effective form of critical legal chains analysis may require more than the identification of the actors that are present on the ground or of the legal structures within which they operate (property law, contract, international human rights conventions signed by the host state). On the contrary, scholars may have to look beyond the geography of the enclosure, reverse-engineer the chain of production, identify beneficiaries and relevant legal structures, follow the financial flows, investigate private mechanisms of certification and codes of conduct, interact with UN bodies or other legally irrelevant human rights courts: the redistributive content of local practices and the trajectories of global dynamics may well be defined by decisions and interventions made each of these spaces and by their interactions.

For these reasons, this Article aims to be an invitation to put the study and production of critical legal maps of production at the center of law and global value chains scholarship. Through the production of a collective and joint effort, communities, academics, activists, attorneys, geographers and sociologists should go beyond descriptive endeavors and be increasingly concerned with the imagination of ways in which legal structures contribute to the consolidation of supply chain capitalism in its current form and how they could be activated to produce alternative economic trajectories and social patterns. However, the coercive, indeterminate and political nature of law should remind of the numerous reasons why law and liberal legalism cannot be seen as the panacea for the inequalities and subordinations that are inherent to supply chain capitalism. Therefore, a strategic approach to global

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Era of Globalization' (2002) 40 *Columbia Journal of Transnational Law* 2, 209-274.

value chains cannot aim to use law in a way that makes capitalism look and act better, but has to aim to contribute to a broader effort to replace capitalism with a non-exploitative form of production that respects both the Earth and human dignity.

Critical legal analysts of global value chains (and perhaps of law clinics) should engage with the local nature of exploitation and redefine its territoriality by embedding it into the complexity of production and consumption. These actions would give visibility to the hidden chokeholds and activate dormant legal gateways, but also lead to imagining new legal structures that could be linked, connected, combined and that can curb spaces for non-legal intervention and confrontation. More importantly, a critical legal chain approach may lead to the establishment of multiple actions that are territorially dispersed but strategically organized: that, in my opinion, would offer a unique opportunity to counterbalance the multiterritoriality of capital, i.e. the fact that “capital can fight us in every place at once” while “we fight in particular locations and moments – here, there, now, then.”<sup>72</sup> Although it is important to accept the partiality of perspective and of the objectives that each one is following, the creation of a multiterritorial legal struggle (joined with non-legal actions and political awareness) can reduce the imbalance of power that currently characterizes global supply capitalism and redefine the existing bargaining positions.

Figure 1: the Koh Kong Province on the map (source EJOLT)

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<sup>72</sup> Jasper Barnes, *Logistics*, note 47.



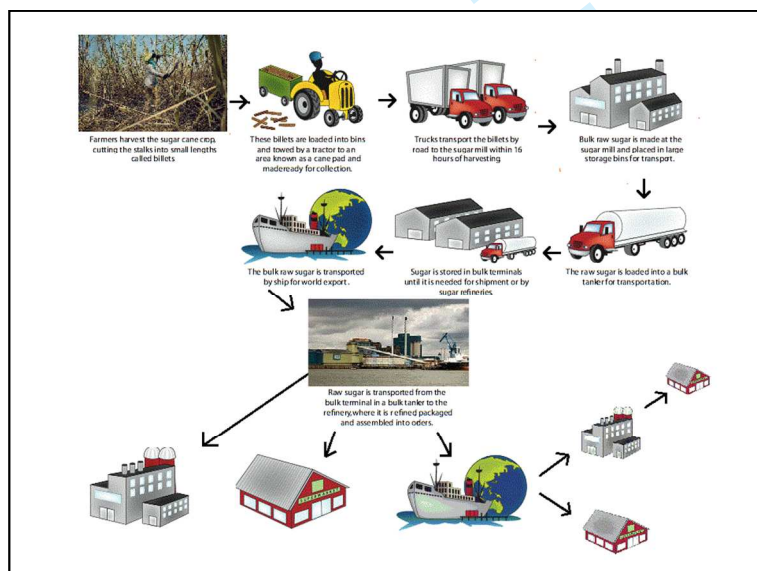
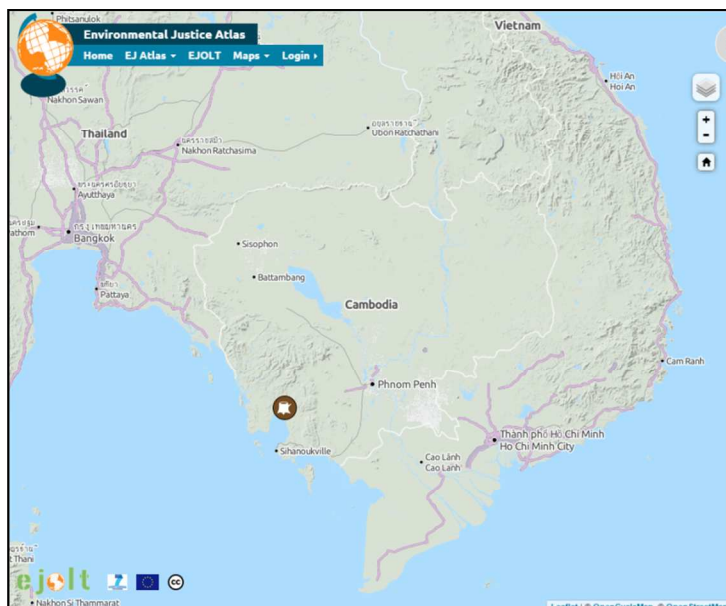
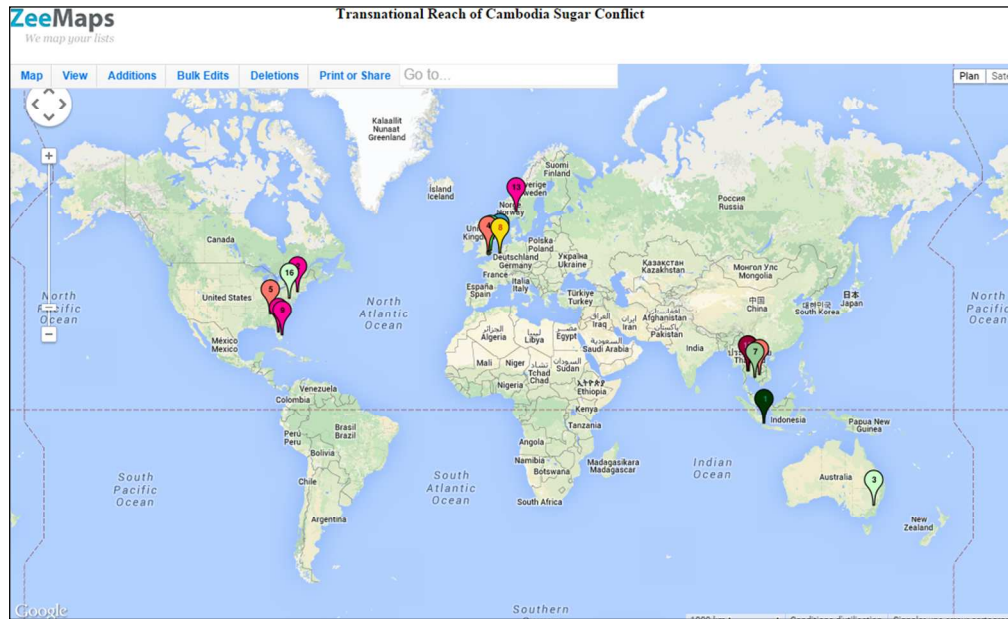
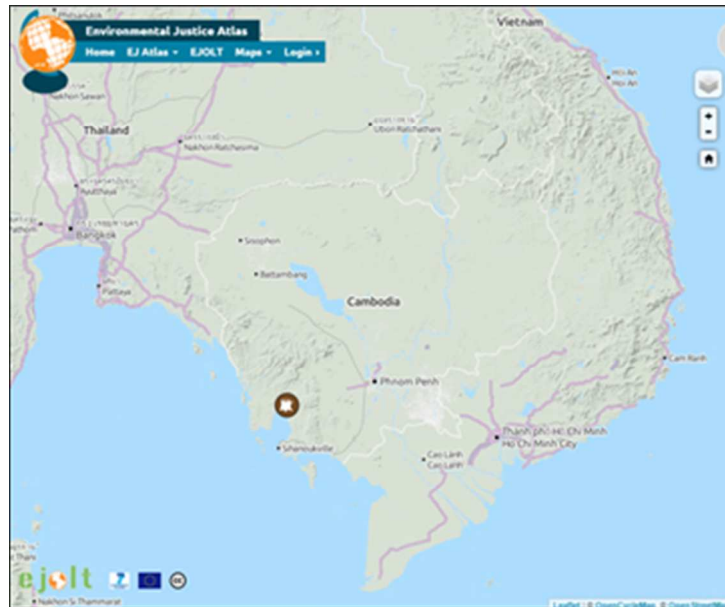
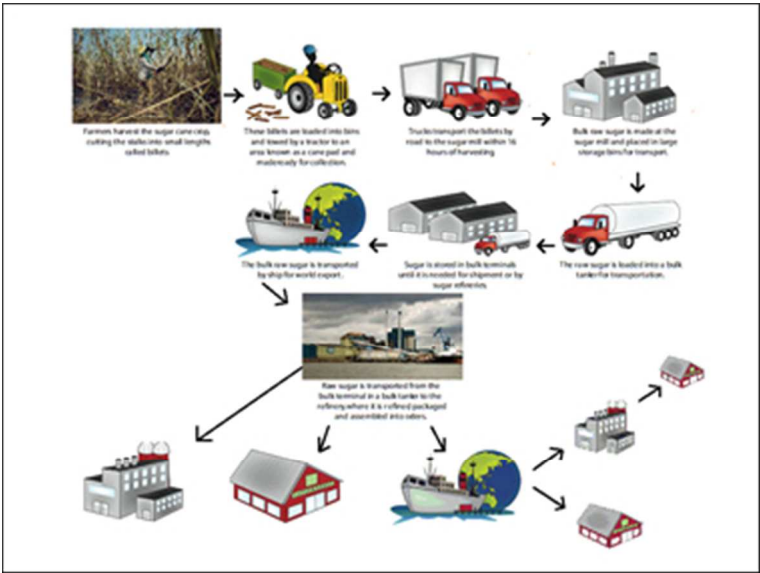


Figure 2: a simplified representation of the Koh Kong blood sugar chain





The Koh Kong Province on the map (source EJOLT)



Simplified representation of the Koh Kong blood sugar chain



Critical legal chain approach: the multi-territoriality of blood sugar (Source: Author)